

Calendar No. 243

106TH CONGRESS
1ST Session

S. 761

[Report No. 106-131]

A BILL

To regulate interstate commerce by electronic means by permitting and encouraging the continued expansion of electronic commerce through the operation of free market forces, and other purposes.

JULY 30, 1999

Reported with an amendment in the nature of a
substitute

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To regulate interstate commerce by electronic means by permitting and encouraging the continued expansion of electronic commerce through the operation of free market forces, and other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 25, 1999

Mr. ABRAHAM (for himself, Mr. MCCAIN, Mr. WYDEN, Mr. BURNS, Mr. LOTT, Mr. ALLARD, Mr. TORRICELLI, Mr. GRAMS, Mr. BROWNBACK, Mr. FRIST, Mr. HAGEL, and Mr. GORTON) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

JULY 30, 1999

Reported by Mr. MCCAIN, with an amendment in the nature of a substitute

[Strike out all after the enacting clause and insert the part printed in *italie*]

A BILL

To regulate interstate commerce by electronic means by permitting and encouraging the continued expansion of electronic commerce through the operation of free market forces, and other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Third Millennium
3 Electronic Commerce Act”.

4 **SEC. 2. FINDINGS.**

5 The Congress makes the following findings:

6 (1) The growth of electronic commerce and
7 electronic government transactions represent a pow-
8 erful force for economic growth, consumer choice,
9 improved civic participation and wealth creation.

10 (2) The promotion of growth in private sector
11 electronic commerce through Federal legislation is in
12 the national interest because that market is globally
13 important to the United States.

14 (3) A consistent legal foundation, across mul-
15 tiple jurisdictions, for electronic commerce will pro-
16 mote the growth of such transactions, and that such
17 a foundation should be based upon a simple, tech-
18 nology neutral, non-regulatory, and market-based
19 approach.

20 (4) The Nation and the world stand at the be-
21 ginning of a large scale transition to an information
22 society which will require innovative legal and policy
23 approaches, and therefore, States can serve the na-
24 tional interest by continuing their proven role as lab-
25 oratories of innovation for quickly evolving areas of
26 public policy, provided that States also adopt a con-

1 sistent, minimalist national baseline to eliminate ob-
2 solete barriers to electronic commerce such as undue
3 paper and pen requirements, and further, that any
4 such innovation should not unduly burden inter-ju-
5 risdictional commerce.

6 (5) To the extent State laws or regulations in
7 fact create an undue burden to interstate commerce
8 in the important burgeoning area of electronic com-
9 merce, the national interest is best served by Federal
10 preemption to the extent necessary to eliminate said
11 burden, but that absent such burdens, the best legal
12 system for electronic commerce will result from con-
13 tinuing experimentation by individual jurisdictions.

14 (6) With due regard to the fundamental need
15 for adequate consistency, each jurisdiction that en-
16 acts such laws should have the right to determine
17 the need for any exceptions to protect consumers
18 and maintain consistency with existing related bod-
19 ies of law within a particular jurisdiction.

20 (7) Industry has developed several electronic
21 signature technologies for use in electronic trans-
22 actions, and the public policies of the United States
23 should serve to promote a dynamic marketplace
24 within which these technologies can compete. Con-
25 sistent with this Act, States should permit the use

1 and development of any authentication technologies
2 that are appropriate as practicable as between pri-
3 vate parties and in use with State agencies.

4 **SEC. 3. PURPOSES.**

5 The purposes of this Act are—

6 (1) to permit and encourage the continued ex-
7 pansion of electronic commerce through the oper-
8 ation of free market forces rather than proscriptive
9 governmental mandates and regulations;

10 (2) to promote public confidence in the validity,
11 integrity and reliability of electronic commerce and
12 online government under Federal law;

13 (3) to facilitate and promote electronic com-
14 merce by clarifying the legal status of electronic
15 records and electronic signatures in the context of
16 writing and signing requirements imposed by law;
17 and

18 (4) to promote the development of a consistent
19 national legal infrastructure necessary to support of
20 electronic commerce at the Federal and State levels
21 within existing areas of jurisdiction.

22 **SEC. 4. DEFINITIONS.**

23 In this Act:

24 (1) **ELECTRONIC.**—The term “electronic”
25 means of or relating to technology having electrical,

1 digital, magnetic, wireless, optical, electromagnetic,
2 or similar capabilities.

3 (2) ~~ELECTRONIC RECORD.~~—The term “elec-
4 tronic record” means a record created, stored, gen-
5 erated, received, or communicated by electronic
6 means.

7 (3) ~~ELECTRONIC SIGNATURE.~~—The term “elec-
8 tronic signature” means a signature in electronic
9 form, attached to or logically associated with an
10 electronic record.

11 (4) ~~GOVERNMENTAL AGENCY.~~—The term “gov-
12 ernmental agency” means an executive, legislative,
13 or judicial agency, department, board, commission,
14 authority, institution, or instrumentality of the Fed-
15 eral Government or of a State or of any county, mu-
16 nicipality, or other political subdivision of a State.

17 (5) ~~RECORD.~~—The term “record” means infor-
18 mation that is inscribed on a tangible medium or
19 that is stored in an electronic or other medium and
20 is retrievable in perceivable form.

21 (6) ~~SIGN.~~—The term “sign” means to execute
22 or adopt a signature.

23 (7) ~~SIGNATURE.~~—The term “signature” means
24 any symbol, sound, or process executed or adopted
25 by a person with intent to authenticate a record.

1 (8) TRANSACTION.—The term “transaction”
 2 means an action or set of actions occurring between
 3 2 or more persons relating to the conduct of com-
 4 merce.

5 **SEC. 5. PRINCIPLES GOVERNING THE USE OF ELECTRONIC**
 6 **SIGNATURES IN INTERNATIONAL TRANS-**
 7 **ACTIONS.**

8 (a) IN GENERAL.—To the extent practicable, the
 9 Federal Government shall observe the following principles
 10 in an international context to enable commercial electronic
 11 transaction:

12 (1) Remove paper-based obstacles to electronic
 13 transactions by adopting relevant principles from the
 14 Model Law on Electronic Commerce adopted in
 15 1996 by the United Nations Commission on Inter-
 16 national Trade Law (UNCITRAL).

17 (2) Permit parties to a transaction to determine
 18 the appropriate authentication technologies and im-
 19 plementation models for their transactions, with as-
 20 surance that those technologies and implementation
 21 models will be recognized and enforced.

22 (3) Permit parties to a transaction to have the
 23 opportunity to prove in court or other proceedings
 24 that their authentication approaches and their trans-
 25 actions are valid.

1 (4) Take a non-discriminatory approach to elec-
2 tronic signatures and authentication methods from
3 other jurisdictions.

4 **SEC. 6. INTERSTATE CONTRACT CERTAINTY.**

5 (a) INTERSTATE COMMERCIAL CONTRACTS.—A con-
6 tract relating to an interstate transaction shall not be de-
7 nied legal effect solely because an electronic signature or
8 electronic record was used in its formation.

9 (b) METHODS.—Notwithstanding any rule of law
10 that specifies one or more acceptable or required tech-
11 nologies or business models, including legal or other proce-
12 dures, necessary to create, use, receive, validate, or invali-
13 date electronic signatures or electronic records, the parties
14 to an interstate transaction may establish by contract,
15 electronically or otherwise, such technologies or business
16 models, including legal or other procedures to create, use,
17 receive, validate, or invalidate electronic signatures and
18 electronic records.

19 (c) NOT PREEMPT STATE LAW.— Nothing in this
20 section shall be construed to preempt the law of a State
21 that enacts legislation governing electronic transactions
22 which is substantially similar to, and not inconsistent
23 with, subsections (a) and (b). A State that enacts uniform
24 electronic transactions legislation substantially as reported
25 to State legislatures by the National Conference of Com-

1 missioners on Uniform State Law shall be deemed to have
 2 satisfied this criterion.

3 (d) ~~INTENT.~~—The intent of a person to execute or
 4 adopt an electronic signature shall be determined from the
 5 context and surrounding circumstances, which may in-
 6 clude accepted commercial practices.

7 **SEC. 7. ADVISORY COMMISSION ON ELECTRONIC AUTHEN-**
 8 **TICATION.**

9 (a) ~~ESTABLISHMENT OF COMMISSION.~~—There is es-
 10 tablished a commission to be known as the Advisory Com-
 11 mission on Electronic Authentication (in this section re-
 12 ferred to as the “Commission”). The Commission shall—

13 (1) be composed of 17 members appointed in
 14 accordance with subsection (b), including the chair-
 15 person who shall be selected by the members of the
 16 Commission from among themselves; and

17 (2) conduct its business in accordance with the
 18 provisions of this section.

19 (b) ~~MEMBERSHIP.~~—

20 (1) ~~IN GENERAL.~~—The Commissioners shall
 21 serve for the life of the Commission. The member-
 22 ship of the Commission shall be as follows:

23 (A) 3 representatives from the Federal
 24 Government, comprised of the Secretary of
 25 Commerce, the Secretary of the Treasury, and

1 the United States Trade Representative (or
2 their respective delegates).

3 ~~(B) 4 representatives from State and local~~
4 ~~governments.~~

5 ~~(C) 10 representatives of the electronic~~
6 ~~commerce industry (including small business);~~
7 ~~banks and other financial service companies;~~
8 ~~and consumer groups, comprised of—~~

9 ~~(i) 3 individuals appointed by the Ma-~~
10 ~~jority Leader of the Senate;~~

11 ~~(ii) 2 individuals appointed by the Mi-~~
12 ~~nority Leader of the Senate;~~

13 ~~(iii) 3 individuals appointed by the~~
14 ~~Speaker of the House of Representatives;~~
15 ~~and~~

16 ~~(iv) 2 individuals appointed by the Mi-~~
17 ~~nority Leader of the House of Representa-~~
18 ~~tives.~~

19 ~~(2) APPOINTMENTS.—Appointments to the~~
20 ~~Commission shall be made not later than 45 days~~
21 ~~after the date of the enactment of this Act. The~~
22 ~~chairperson shall be selected not later than 60 days~~
23 ~~after the date of the enactment of this Act.~~

1 ~~(3) VACANCIES.—Any vacancy in the Commis-~~
 2 ~~sion shall not affect its powers, but shall be filled in~~
 3 ~~the same manner as the original appointment.~~

4 ~~(c) OTHER RESOURCES.—The Commission shall have~~
 5 ~~reasonable access to materials, resources, data, and other~~
 6 ~~information from the Department of Justice, the Depart-~~
 7 ~~ment of Commerce, the Department of State, the Depart-~~
 8 ~~ment of the Treasury, and the Office of the United States~~
 9 ~~Trade Representative. The Commission shall also have~~
 10 ~~reasonable access to use the facilities of any such Depart-~~
 11 ~~ment or Office for purposes of conducting meetings.~~

12 ~~(d) SUNSET.—The Commission shall terminate 12~~
 13 ~~months after the date of the enactment of this Act.~~

14 ~~(e) DUTIES OF THE COMMISSION.—The Commission~~
 15 ~~shall conduct a thorough study of electronic authentication~~
 16 ~~systems, including third-party verification systems, in the~~
 17 ~~transacting of contractual agreements, the use of such sys-~~
 18 ~~tems in electronic commerce today, and the role of the~~
 19 ~~electronic commerce industry, the Federal Government,~~
 20 ~~and the States in such a system.~~

21 **SEC. 8. STUDY OF LEGAL AND REGULATORY BARRIERS TO**
 22 **ELECTRONIC COMMERCE.**

23 ~~(a) BARRIERS.—Each Federal agency shall, not later~~
 24 ~~than 6 months after the date of enactment of this Act,~~
 25 ~~provide a report to the Director of the Office of Manage-~~

1 ment and Budget and the Secretary of Commerce identi-
 2 fying any provision of law administered by such agency,
 3 or any regulations issued by such agency and in effect on
 4 the date of enactment of this Act, that may impose a bar-
 5 rier to electronic transactions, or otherwise to the conduct
 6 of commerce online or by electronic means. Such barriers
 7 include, but are not limited to, barriers imposed by a law
 8 or regulation directly or indirectly requiring that signa-
 9 tures, or records of transactions, be accomplished or re-
 10 tained in other than electronic form. In its report, each
 11 agency shall identify the barriers among those identified
 12 whose removal would require legislative action, and shall
 13 indicate agency plans to undertake regulatory action to
 14 remove such barriers among those identified as are caused
 15 by regulations issued by the agency.

16 (b) REPORT TO CONGRESS.—The Secretary of Com-
 17 merce, in consultation with the Director of the Office of
 18 Management and Budget, shall, within 18 months after
 19 the date of enactment of this Act, and after the consulta-
 20 tion required by subsection (c) of this section, report to
 21 the Congress concerning—

22 (1) legislation needed to remove barriers to
 23 electronic transactions or otherwise to the conduct of
 24 commerce online or by electronic means; and

1 (2) actions being taken by the Executive
 2 Branch and individual Federal agencies to remove
 3 such barriers as are caused by agency regulations or
 4 policies.

5 (c) CONSULTATION.—In preparing the report re-
 6 quired by this section, the Secretary of Commerce shall
 7 consult with the General Services Administration, the Na-
 8 tional Archives and Records Administration, and the At-
 9 torney General concerning matters involving the authen-
 10 ticity of records, their storage and retention, and their
 11 usability for law enforcement purposes.

12 (d) INCLUDE FINDINGS IF NO RECOMMENDA-
 13 TIONS.—If the report required by this section omits rec-
 14 ommendations for actions needed to fully remove identi-
 15 fied barriers to electronic transactions or to online or elec-
 16 tronic commerce, it shall include a finding or findings, in-
 17 cluding substantial reasons therefor, that such removal is
 18 impracticable or would be inconsistent with the implemen-
 19 tation or enforcement of applicable laws

20 **SECTION 1. SHORT TITLE.**

21 *This Act may be cited as the “Third Millennium Dig-*
 22 *ital Commerce Act”.*

23 **SEC. 2. FINDINGS.**

24 *The Congress makes the following findings:*

1 (1) *The growth of electronic commerce and elec-*
2 *tronic government transactions represent a powerful*
3 *force for economic growth, consumer choice, improved*
4 *civic participation and wealth creation.*

5 (2) *The promotion of growth in private sector*
6 *electronic commerce through Federal legislation is in*
7 *the national interest because that market is globally*
8 *important to the United States.*

9 (3) *A consistent legal foundation, across multiple*
10 *jurisdictions, for electronic commerce will promote the*
11 *growth of such transactions, and that such a founda-*
12 *tion should be based upon a simple, technology neu-*
13 *tral, non-regulatory, and market-based approach.*

14 (4) *The Nation and the world stand at the begin-*
15 *ning of a large scale transition to an information so-*
16 *ciety which will require innovative legal and policy*
17 *approaches, and therefore, States can serve the na-*
18 *tional interest by continuing their proven role as lab-*
19 *oratories of innovation for quickly evolving areas of*
20 *public policy, provided that States also adopt a con-*
21 *sistent, reasonable national baseline to eliminate obso-*
22 *lete barriers to electronic commerce such as undue*
23 *paper and pen requirements, and further, that any*
24 *such innovation should not unduly burden inter-juris-*
25 *dictional commerce.*

1 (5) *To the extent State laws or regulations do*
2 *not provide a consistent, reasonable national baseline*
3 *or in fact create an undue burden to interstate com-*
4 *merce in the important burgeoning area of electronic*
5 *commerce, the national interest is best served by Fed-*
6 *eral preemption to the extent necessary to provide*
7 *such consistent, reasonable national baseline elimi-*
8 *nate said burden, but that absent such lack of con-*
9 *sistent, reasonable national baseline or such undue*
10 *burdens, the best legal system for electronic commerce*
11 *will result from continuing experimentation by indi-*
12 *vidual jurisdictions.*

13 (6) *With due regard to the fundamental need for*
14 *a consistent national baseline, each jurisdiction that*
15 *enacts such laws should have the right to determine*
16 *the need for any exceptions to protect consumers and*
17 *maintain consistency with existing related bodies of*
18 *law within a particular jurisdiction.*

19 (7) *Industry has developed several electronic sig-*
20 *nature technologies for use in electronic transactions,*
21 *and the public policies of the United States should*
22 *serve to promote a dynamic marketplace within*
23 *which these technologies can compete. Consistent with*
24 *this Act, States should permit the use and develop-*
25 *ment of any authentication technologies that are ap-*

1 *appropriate as practicable as between private parties*
2 *and in use with State agencies.*

3 **SEC. 3. PURPOSES.**

4 *The purposes of this Act are—*

5 *(1) to permit and encourage the continued ex-*
6 *pansion of electronic commerce through the operation*
7 *of free market forces rather than proscriptive govern-*
8 *mental mandates and regulations;*

9 *(2) to promote public confidence in the validity,*
10 *integrity and reliability of electronic commerce and*
11 *online government under Federal law;*

12 *(3) to facilitate and promote electronic commerce*
13 *by clarifying the legal status of electronic records and*
14 *electronic signatures in the context of writing and*
15 *signing requirements imposed by law;*

16 *(4) to facilitate the ability of private parties en-*
17 *gaged in interstate transactions to agree among them-*
18 *selves on the terms and conditions on which they use*
19 *and accept electronic signatures and electronic*
20 *records; and*

21 *(5) to promote the development of a consistent*
22 *national legal infrastructure necessary to support of*
23 *electronic commerce at the Federal and State levels*
24 *within existing areas of jurisdiction.*

1 **SEC. 4. DEFINITIONS.**

2 *In this Act:*

3 (1) *ELECTRONIC.*—*The term “electronic” means*
4 *relating to technology having electrical, digital, mag-*
5 *netic, wireless, optical, electromagnetic, or similar ca-*
6 *pabilities.*

7 (2) *ELECTRONIC AGENT.*—*The term “electronic*
8 *agent” means a computer program or an electronic or*
9 *other automated means used to initiate an action or*
10 *respond to electronic records or performances in whole*
11 *or in part without review by an individual at the*
12 *time of the action or response.*

13 (3) *ELECTRONIC RECORD.*—*The term “electronic*
14 *record” means a record created, generated, sent, com-*
15 *municated, received, or stored by electronic means.*

16 (4) *ELECTRONIC SIGNATURE.*—*The term “elec-*
17 *tronic signature” means an electronic sound, symbol,*
18 *or process attached to or logically associated with an*
19 *electronic record and executed or adopted by a person*
20 *with the intent to sign the electronic record.*

21 (5) *GOVERNMENTAL AGENCY.*—*The term “gov-*
22 *ernmental agency” means an executive, legislative, or*
23 *judicial agency, department, board, commission, au-*
24 *thority, institution, or instrumentality of the Federal*
25 *Government or of a State or of any county, munici-*
26 *pality, or other political subdivision of a State.*

1 (6) *RECORD*.—The term “record” means infor-
 2 mation that is inscribed on a tangible medium or
 3 that is stored in an electronic or other medium and
 4 is retrievable in perceivable form.

5 (7) *TRANSACTION*.—The term “transaction”
 6 means an action or set of actions relating to the con-
 7 duct of commerce between 2 or more persons, neither
 8 of which is the United States Government, a State, or
 9 an agency, department, board, commission, authority,
 10 institution, or instrumentality of the United States
 11 Government or of a State.

12 (8) *UNIFORM ELECTRONIC TRANSACTIONS ACT*.—
 13 The term “Uniform Electronic Transactions Act”
 14 means the Uniform Electronic Transactions Act as
 15 reported to State legislatures by the National Con-
 16 ference of Commissioners on Uniform State Law in
 17 the form or any variation thereof that is authorized
 18 or provided for in such report.

19 **SEC. 5. PRINCIPLES GOVERNING THE USE OF ELECTRONIC**
 20 **SIGNATURES IN INTERNATIONAL TRANS-**
 21 **ACTIONS.**

22 To the extent practicable, the Federal Government
 23 shall observe the following principles in an international
 24 context to enable commercial electronic transaction:

1 (1) *Remove paper-based obstacles to electronic*
 2 *transactions by adopting relevant principles from the*
 3 *Model Law on Electronic Commerce adopted in 1996*
 4 *by the United Nations Commission on International*
 5 *Trade Law (UNCITRAL).*

6 (2) *Permit parties to a transaction to determine*
 7 *the appropriate authentication technologies and im-*
 8 *plementation models for their transactions, with as-*
 9 *surance that those technologies and implementation*
 10 *models will be recognized and enforced.*

11 (3) *Permit parties to a transaction to have the*
 12 *opportunity to prove in court or other proceedings*
 13 *that their authentication approaches and their trans-*
 14 *actions are valid.*

15 (4) *Take a non-discriminatory approach to elec-*
 16 *tronic signatures and authentication methods from*
 17 *other jurisdictions.*

18 **SEC. 6. INTERSTATE CONTRACT CERTAINTY.**

19 (a) *IN GENERAL.*—*The following rules apply to any*
 20 *commercial transaction affecting interstate commerce:*

21 (1) *A record or signature may not be denied*
 22 *legal effect or enforceability solely because it is in*
 23 *electronic form.*

1 (2) *A contract may not be denied legal effect or*
 2 *enforceability solely because an electronic record was*
 3 *used in its formation.*

4 (3) *If a law requires a record to be in writing,*
 5 *or provides consequences if it is not, an electronic*
 6 *record satisfies the law.*

7 (4) *If a law requires a signature, or provides*
 8 *consequences in the absence of a signature, the law is*
 9 *satisfied with respect to an electronic record if the*
 10 *electronic record includes an electronic signature.*

11 (b) *METHODS.—The parties to a contract may agree*
 12 *on the terms and conditions on which they will use and*
 13 *accept electronic signatures and electronic records, includ-*
 14 *ing the methods therefor, in commercial transactions affect-*
 15 *ing interstate commerce. Nothing in this subsection requires*
 16 *that any party enter into such a contract.*

17 (c) *INTENT.—The following rules apply to any com-*
 18 *mercial transaction affecting interstate commerce:*

19 (1) *An electronic record or electronic signature is*
 20 *attributable to a person if it was the act of the person.*
 21 *The act of the person may be established in any man-*
 22 *ner, including a showing of the efficacy of any secu-*
 23 *rity procedures applied to determine the person to*
 24 *which the electronic record or electronic signature was*
 25 *attributable.*

1 (2) *The effect of an electronic record or electronic*
 2 *signature attributed to a person under paragraph (1)*
 3 *is determined from the context and surrounding cir-*
 4 *cumstances at the time of its creation, execution, or*
 5 *adoption, including the parties' agreement, if any,*
 6 *and otherwise as provided by law.*

7 (d) *FORMATION OF CONTRACT.*—*A contract relating to*
 8 *a commercial transaction affecting interstate commerce*
 9 *may not be denied legal effect solely because its formation*
 10 *involved—*

11 (1) *the interaction of electronic agents of the par-*
 12 *ties; or*

13 (2) *the interaction of an electronic agent of a*
 14 *party and an individual who acts on that individ-*
 15 *ual's own behalf or for another person.*

16 (e) *APPLICATION IN UETA STATES.*—*This section does*
 17 *not apply in any State in which the Uniform Electronic*
 18 *Transactions Act is in effect.*

19 **SEC. 7. STUDY OF LEGAL AND REGULATORY BARRIERS TO**
 20 **ELECTRONIC COMMERCE.**

21 (a) *BARRIERS.*—*Each Federal agency shall, not later*
 22 *than 6 months after the date of enactment of this Act, pro-*
 23 *vide a report to the Director of the Office of Management*
 24 *and Budget and the Secretary of Commerce identifying any*
 25 *provision of law administered by such agency, or any regu-*

1 *lations issued by such agency and in effect on the date of*
 2 *enactment of this Act, that may impose a barrier to elec-*
 3 *tronic transactions, or otherwise to the conduct of commerce*
 4 *online or by electronic means. Such barriers include, but*
 5 *are not limited to, barriers imposed by a law or regulation*
 6 *directly or indirectly requiring that signatures, or records*
 7 *of transactions, be accomplished or retained in other than*
 8 *electronic form. In its report, each agency shall identify the*
 9 *barriers among those identified whose removal would re-*
 10 *quire legislative action, and shall indicate agency plans to*
 11 *undertake regulatory action to remove such barriers among*
 12 *those identified as are caused by regulations issued by the*
 13 *agency.*

14 **(b) REPORT TO CONGRESS.**—*The Secretary of Com-*
 15 *merce, in consultation with the Director of the Office of*
 16 *Management and Budget, shall, within 18 months after the*
 17 *date of enactment of this Act, and after the consultation*
 18 *required by subsection (c) of this section, report to the Con-*
 19 *gress concerning—*

20 *(1) legislation needed to remove barriers to elec-*
 21 *tronic transactions or otherwise to the conduct of*
 22 *commerce online or by electronic means; and*

23 *(2) actions being taken by the Executive Branch*
 24 *and individual Federal agencies to remove such bar-*
 25 *riers as are caused by agency regulations or policies.*

1 (c) *CONSULTATION.*—*In preparing the report required*
2 *by this section, the Secretary of Commerce shall consult*
3 *with the General Services Administration, the National Ar-*
4 *chives and Records Administration, and the Attorney Gen-*
5 *eral concerning matters involving the authenticity of*
6 *records, their storage and retention, and their usability for*
7 *law enforcement purposes.*

8 (d) *INCLUDE FINDINGS IF NO RECOMMENDATIONS.*—
9 *If the report required by this section omits recommenda-*
10 *tions for actions needed to fully remove identified barriers*
11 *to electronic transactions or to online or electronic com-*
12 *merce, it shall include a finding or findings, including sub-*
13 *stantial reasons therefor, that such removal is impracticable*
14 *or would be inconsistent with the implementation or en-*
15 *forcement of applicable laws*